

**PUBLIC SERVICE COMMISSION OF SOUTH CAROLINA
COMMISSION DIRECTIVE**

ADMINISTRATIVE MATTER



DATE

August 22, 2012

MOTOR CARRIER MATTER



DOCKET NO.

2012-269-A

UTILITIES MATTER



ORDER NO.

2012-641

THIS DIRECTIVE SHALL SERVE AS THE COMMISSION'S ORDER ON THIS ISSUE.

SUBJECT:

Docket No. 2012-269-A - Petition of South Carolina Movers' Association for Proposed Revisions to the Commission's Regulations Concerning Representation in Hearings Before the Commission, Specifically Sections 103-134 and 103-805 - Discuss this Matter with the Commission.

COMMISSION ACTION:

This Commission has considered the basic issue raised by this request on several previous occasions, including Docket Nos. 2004-249-T, 2007-445-A and 2010-33-T. The 2007 docket was opened to explore, among other things, whether the Commission should broaden the types of cases in which persons could appear before the Commission on a *pro se* basis.

The South Carolina Supreme Court is responsible for the administration of the practice of law in South Carolina. As required by the Supreme Court's 1992 opinion in *In re: The Unauthorized Practice of Law*, (309 S.C. 304), this Commission is obligated by law to submit to the South Carolina Supreme Court. any proposal that would authorize Commission practice by non-attorneys. On July 30, 2008, the Commission therefore submitted to the Court a proposed regulation which would have allowed – at the discretion of the Commission – waiver of the requirement that any entity other than an individual person appearing *pro se* be represented by an attorney authorized to practice law in South Carolina.

In response, via a letter from Chief Justice Toal dated September 8, 2008, and through the testimony of Supreme Court Clerk of Court Dan Shearouse at a Commission hearing of the same date, the Supreme Court expressed reservations about the proposed new Regulation and requested that the Commission amend its proposal to better ensure protection of the public from risks of being represented by non-lawyers. The Commission's Chief Clerk, Jocelyn Boyd, informed the Commission and participants at that hearing that the Commission staff had taken the Supreme Court's remarks to heart. Further, she stated that, due to the Supreme Court's concerns, and in an effort to work to create the best proposal possible, the staff had scheduled a meeting with the Commission's Advisory Committee for September 18, 2008, to discuss Chief Justice Toal's letter and some possible solutions to address the Court's concerns.

The Advisory Committee meeting held on September 18 was heavily attended by representatives of various entities that frequently appear before the Commission, and included an extensive discussion among them of the concerns expressed by the Supreme Court involving *pro se* representation, i.e., protecting the public from negative consequences of erroneously prepared legal documents and inadequate legal advice or representation by persons who are untrained in the law. Although the Commission staff raised the issue with the Advisory Committee regarding representation by *pro se* litigants in both uncontested and contested matters, responses indicated that significant support existed only for such representation in uncontested matters. In contrast, serious objections were expressed during the Advisory Committee meeting regarding broadening the representation by *pro se* litigants into contested matters.

As a result of these extensive investigations into the issues of *pro se* representation, Commission Staff further revised its proposed regulations. As required, this amended proposal was submitted to the Supreme Court, which submitted no objection to the regulations as revised. Subsequently, on December 10, 2008, this Commission voted on and approved the proposed regulations, as revised on the basis of the evidence presented at the hearing of September 10, 2008, the input received from the Commission Advisory Committee, and the absence of further objection from the Supreme Court. That motion provided that in certain unopposed matters an entity may proceed without counsel. The motion also required that a written statement from a representative of the party be provided stating, in part, that the entity assumes the risk and resulting consequences, if any, of proceeding without legal counsel. This carefully crafted broadening of the Commission's regulations was submitted to the South Carolina Legislative Council for General Assembly review, and was later approved.

The South Carolina Movers' Association, Petitioner in the current docket, has carried out a thoughtful analysis of those regulations and has proposed changes that would further broaden them to allow representation of businesses by non-attorneys in contested motor carrier hearings. Although I appreciate the careful work done in proposing such changes to our regulations, I believe that the potential benefits of such further changes are outweighed by the concerns and considerations that led the Commission to craft the already broadened regulations that are now in effect. The current regulations are the result of thorough work done to balance the desires of entities wishing to reduce the cost of appearing before the Commission with the previously discussed concerns expressed by the Court and the Advisory Committee. I continue to be persuaded that such *pro se* representation should be limited to uncontested matters of the types listed in our current regulations, and therefore move that the request for amendment of the current representation regulation be hereby denied.

Although, as stated, I believe the *pro se* regulations should not be further amended, the Petitioners are not left without opportunities for participation in contested motor carrier hearings, even without the benefit of counsel. One way in which the Petitioners can participate is to provide factual testimony as public witnesses pursuant to Commission Regulation 103-804 (R). Public witnesses that appear before the Commission are not required to pre-file testimony and, subject to proper objection and cross-examination from other parties, could certainly provide factual hearing testimony regarding the subject matter of the docket in a motor carrier case.

Another way in which Petitioners can participate in appropriate hearings is indicated by way of analogy in the recent Court of Appeals decision, *SC Department of Revenue v. Sandalwood Social Club*, Op. # 5014, footnote 3, dated August 1, 2012, where the Court of Appeals points out that, in certain cases, it is appropriate for an agency responsible for investigation and enforcement matters to call third parties as hearing witnesses. The Office of Regulatory Staff, which represents the public interest in matters pending before the Commission, may similarly call third party witnesses in appropriate cases.

PRESIDING: Wright

SESSION: Regular

TIME: 2:00 p.m.

	MOTION	YES	NO	OTHER
FLEMING	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
HALL	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
HAMILTON	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
HOWARD	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
MITCHELL	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
WHITFIELD	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
WRIGHT	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	

(SEAL)

RECORDED BY: J. Schmieding